IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

STATE OF IOWA, Plaintiff,	))))	CASE NO. _____
vs.	))	
JASON BESLER, Defendant.	))))	APPLICATION FOR LEAVE TO FILE PETITION FOR WRIT OF QUO WARRANTO

COMES NOW the State of Iowa, through Gary Dickey, and moves the Court pursuant to Iowa Rule of Civil Procedure 1.1302(2) for leave to file a petition for writ of quo warranto against Jason Besler. In support of this motion, the undersigned states the following:

INTRODUCTION

1.   This application seeks leave from the Court to file a petition for writ of quo warranto against Jason Besler to determine whether Governor Kim Reynolds' purported appointment of him as district court judge was timely under article V, section 15 of the Iowa Constitution.

2.   As first reported on the website, www.bleedingheartland.com, all publicly available information indicates that Governor Reynolds failed to appoint Mr. Besler to the court within thirty days of his nomination by the judicial nominating commission.[1]

3.   Because the chief justice of the supreme court did not make the appointment following the expiration of the thirty-day deadline, Mr. Besler is unlawfully holding the public office of district court judge.

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[1] *Exclusive: How Kim Reynolds got away with violating Iowa's Constitution*, (https://www.bleedingheartland.com/2018/09/12/exclusive-how-kim-reynolds-got-away-with-violating-iowas-constitution/) (09/12/18).

FACTUAL BACKGROUND

4.   On May 22, 2018, the judicial nominating commission submitted the names of Jason Besler and Ellen Ramsey-Kacena to Governor Kim Reynolds for the purpose of filling a vacancy in the Sixth Judicial District.

5.   Accordingly, June 21, 2018, was the last day in which Governor Reynolds was authorized by the Iowa Constitution to make the appointment.

6.   It appears from public records requests that the Governor's Office has no written documentation that contemporaneously memorializes the purported appointment on June 21, 2018.

7.   It further appears that Governor Reynolds did not notify the nominating commission, general public, the chief justice, or either nominee of the appointment until June 25, 2018—four days after the expiration of the thirty-day deadline.

8.   While Mr. Besler's judicial commission certificate is dated June 21, 2018, both Governor Reynolds and Secretary of State Paul Pate acknowledge that it was actually signed on June 25, 2018.

9.   On October 9, 2018, the undersigned sent a letter to Johnson County Attorney Janet Lyness requesting that she pursue a civil action in the nature of quo warranto against Mr. Besler pursuant to Iowa Rule of Civil Procedure 1.1302(1). A copy of that letter is attached hereto.

10.   By letter dated October 19, 2018, Ms. Lyness notified the undersigned that she declines to file the requested petition.

11.   The undersigned has also visited by phone with a senior official in the Iowa Department of Justice who indicates that the attorney general will not pursue a civil action in the nature of quo warranto against Mr. Besler pursuant to Iowa Rule of Civil Procedure 1.1302(2).

APPLICABLE LEGAL PRINCIPLES

12.   Article V, section 15 of the Iowa Constitution provides:

Vacancies in the supreme court and district court shall be filled by
appointment by the governor from lists of nominees submitted by the
appropriate judicial nominating commission. Three nominees shall be
submitted for each supreme court vacancy, and two nominees shall be
submitted for each district court vacancy. If the governor fails for thirty days
to make the appointment, it shall be made from such nominees by the chief
justice of the supreme court.

Iowa Const. art. V, § 15.

13.   This provision was added to the Iowa Constitution by amendment in 1962.

14.   An "appointment" is the "act of appointing someone or something."[2]

15.   To "appoint" someone to an office is "to name officially" that person for the

position.[3]

16.   Taken together, in order for the governor to "make the appointment" requires

the governor to name officially the nominee for the district court vacancy.

ANALYSIS

17.   Applying the most liberal construction to article V, section 15, Governor

Reynolds could have appointed Mr. Besler in any of the following ways:

- Notifying Mr. Besler of the appointment;[4]
- Notifying the judicial nominating commission of the appointment;
- Notifying the chief justice of the appointment;
- Announcing the appointment to the general public or via a press release; or
- Contemporaneously memorializing the appointment in writing.

18.   Governor Reynolds, however, failed to take any of these steps before June 25,

2018.

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[2] https://www.merriam-webster.com/dictionary/appointment

[3] https://www.merriam-webster.com/dictionary/appoint

[4] According to the Bleeding Heartland report, Chief Justice Cady "has always considered a
judicial appointment was made when it was communicated to the nominee." *Supra* at n.1.

19.   Instead, she merely "told the chief of staff" of her decision to appoint Mr.
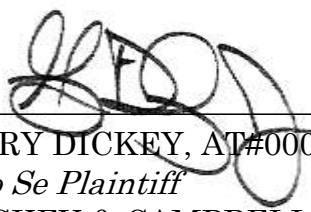
Besler.[5]

20.   Assuming her statement is true, simply informing her chief of staff of her

decision is insufficient to constitute the official act of filling a district court vacancy.

21.   To allow otherwise "would result in interminable confusion and in an almost

immeasurable amount of loss of public service, growing out of contentions and disputes over

the rightful possessor of an appointive public office." *Johnson v. Sampson*, 24 S.W.2d 306

(Ky. 193).

CONCLUSION

WHEREFORE the State of Iowa, through the undersigned, respectfully requests

this Court enter an order granting leave to file a civil action in the nature of quo warranto

against Jason Besler without the requirement of bond.

DATED this 1st day of November 2018.

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[5] *Governor answers questions about timing of district judge appointment*,
(https://www.radioiowa.com/2018/09/19/governor-answers-questions-about-timing-of-district-judge-appointment/) (09/19/18).